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3 **MINUTES OF THE COTTONWOOD HEIGHTS CITY**
4 **BOARD OF ADJUSTMENT MEETING**

5
6 **Monday, October 22, 2007**

7 **8:30 a.m.**

8 **Cottonwood Heights City Council Room**
9 **1265 East Fort Union Boulevard, Suite 250**
10

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12
13 ***ATTENDANCE***

14
15 **Board Members:**

16
17 James Holtkamp, Chairman
18 Noor Ul-Hasan
19 James Adinaro, Alternate
20 Robert Good, Alternate
21

22 **City Staff:**

23
24 Michael Black, Planning Director
25 Glenn Symes, Associate Planner
26 Shane Topham, City Attorney
27 Sherry McConkey, Planning Coordinator

28
29 **REGULAR MEETING**

30
31 Chairman James Holtkamp called the meeting to order at 8:30 a.m.

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34 **1. Closed Meeting to Discuss Pending or Reasonably Imminent Litigation.**

35
36 Chair Holtkamp explained that the purpose of the meeting was to discuss pending or reasonably
37 imminent litigation. Procedurally, however, the first thing to be done was to entertain a motion
38 to close the meeting for discussion of the litigation. Members of the public would be invited to
39 leave while the Board discussed the matter. The public would be invited back in once the closed
40 meeting is over.

41
42 (08:30:33) *Board Member Ul-Hasan moved to close the meeting. Board Member Adinaro*
43 *seconded the motion. Vote on motion: James Holtkamp-Aye, Noor Ul-Hasan-Aye, James*
44 *Adinaro-Aye, Robert Good-Aye. The motion passed unanimously.*

45
46 The Board of Adjustment was in closed session from 8:31 a.m. to 9:00 a.m.

47
48 (09:00:37) *Board Member Ul-Hasan moved to adjourn the closed session and reconvene in*
49 *open session. Board Member Adinaro seconded the motion. Vote on motion: James*
50 *Holtkamp-Aye, Noor Ul-Hasan-Aye, James Adinaro-Aye, Robert Good-Aye. The motion*
51 *passed unanimously.*

1 **2. Consideration of proposal to approve appellants' mutual withdrawal of pending**
2 **appeals by (a) David and Heidi Stapel concerning denial of a conditional use permit**
3 **for a short-term rental of 3388 East Creek Road (File #P-07-020); and (b) Tom**
4 **Taylor concerning approval of a conditional use permit for short-term rental of**
5 **8956 South Wasatch Blvd. (File #P-06-151).**
6

7 (09:01:40) Chair Holtkamp explained that when the Board discusses litigation matters, under
8 State law it must to be done in closed session. The decision, however, would be done in an open
9 session. The Board would entertain decisions on the two appeals. Two properties were
10 involved, which were identified as the Wasatch Boulevard property and the Creek Road
11 property. The Wasatch Boulevard property was issued a permit for short-term rental, which was
12 appealed by various neighbors and property owners represented by the appellant, Mr. Tom
13 Taylor. The Creek Road property involved a situation where the Planning Commission denied
14 the permit. The property owners, David and Heidi Stapel, appealed that denial. The Board
15 discussed in closed session a settlement agreement between the parties that would result in, if
16 approved, withdrawal of the appeal.
17

18 City Attorney, Shane Topham, summarized the two proposed decisions. He explained that there
19 would be a separate decision for each appeal. The decision stated that the applicant had
20 withdrawn the underlying appeal and the parties entered into a settlement agreement and agreed
21 to a 30-day window for the settlement agreement to be approved by the City. They also agreed
22 not to withdraw or attempt to revoke their acceptance of the agreement once it is delivered to the
23 City for 30 days to allow adequate time for the agreement to be presented to the other party and
24 approved, signed, executed, and delivered to the City. Mr. Topham explained that the decisions
25 were fairly simple and noted that the Stapel's had attempted to revoke their entry into the
26 settlement agreement, however, the City felt that such a revocation was ineffectual because of
27 the 30 day provision.
28

29 (09:05:25) *Board Member Adinaro moved to consent to and approve withdrawal and*
30 *termination of the appeal under reference File Number P-06-051 based on the settlement*
31 *agreement between the appellant and the appellee executed and delivered on the 26th of*
32 *September, 2007 and by the appellant on the 19th of October. Although the applicant/appellee*
33 *had attempted to withdraw their approval of such an agreement by email, the Board concluded*
34 *that such purported withdrawal was ineffectual due to Section 12 of the settlement agreement,*
35 *which states as follows: "Section 12 – Execution and Delivery. To allow adequate time for*
36 *this agreement to be presented to, approved, executed, and delivered by all of the parties, a*
37 *party's execution and delivery of this agreement shall be deemed irrevocable for 30 days after*
38 *such party's execution and delivery of this agreement to the City." Board Member Ul-Hasan*
39 *seconded the motion.*
40

41 An interest was raised by those in attendance to address the Board. Planning Director, Michael
42 Black, noted that allowing public comment would be at the discretion of the Chair. The Chair
43 allowed two minutes per person for comment.
44

45 (09:07:33) Chris Burke gave his address as 8942 Wasatch Boulevard next to the Stapel rental
46 property. He had reviewed the settlement agreement and stated that in Section H the parties say

1 that reconciliation of the Creek Road and Wasatch Boulevard decisions would require reversal.
2 He confirmed that that was true because one of the decisions was wrong, contrary to law, and
3 contrary to his right as a citizen of Cottonwood Heights. He explained that Cottonwood Heights
4 was not just approving a dispute between two parties but entering into an agreement by offering
5 conditional use permits to the Stapels as an incentive to abide by the agreement. He thought
6 Cottonwood Heights should be enforcing the law and not bargaining it away. He pointed out
7 that in Section 5 of the agreement it states that Mr. Taylor was the sole payor of the filing fee for
8 the appeal. He reported that he personally gave Mr. Taylor \$150 to go toward the fee. At least
9 another \$150 came in from other residents of the Wasatch neighborhood. The money was not
10 meant to be used as a bargaining chip for the residents on Creek Road. He thought it was the
11 responsibility of the Board of Adjustment to correct the mistake of the Planning Commission and
12 not bury it. He requested that the Board make a decision and decide whether the Planning
13 Commission's decision was correct and not enter into an agreement that benefits one of the
14 City's neighborhoods at the expense of another.

15
16 (09:09:47) John Swaney stated that he lived directly behind the Creek Road property and gave
17 his address as 3395 East Stonehill Lane. He noted that the only appeal made on the Wasatch
18 property was made by Tom Taylor.

19
20 In response to a question raised, Mr. Black explained that Tom Taylor filed the application and
21 the fee was a personal check on an account owned by Tom Taylor.

22
23 ***Vote on motion: James Holtkamp-Aye, Noor Ul-Hasan-Aye, James Adinaro-Aye, Robert***
24 ***Good-Aye. The motion passed unanimously.***

25
26 (09:11:23) ***Board Member Adinaro moved that the Board consent to an approval, withdrawal,***
27 ***and termination of the appeal under File Number P-07-020 based on the settlement agreement***
28 ***between the appellant and Thomas Taylor executed and delivered by the appellant on 26***
29 ***September, 2007 and by Mr. Taylor on the 19th of October, 2007. Though the appellant had***
30 ***attempted to withdraw their approval of such an agreement by email, the Board concluded that***
31 ***such withdrawal was ineffectual due to Section 12 of the agreement as stated in execution and***
32 ***delivery to allow adequate time for the agreement to be presented to, approved, executed, and***
33 ***delivered by all of the parties. The party's execution and delivery of this agreement shall be***
34 ***deemed irrevocable for 30 days after such party's execution and delivery of this agreement to***
35 ***the City. Board Member Ul-Hasan seconded the motion. Vote on motion: James Holtkamp-***
36 ***Aye, Noor Ul-Hasan-Aye, James Adinaro-Aye, Robert Good-Aye. The motion passed***
37 ***unanimously.***

38 39 **3. Adjournment.**

40
41 (09:12:56) ***Board Member Ul-Hasan moved to adjourn. Board Member Adinaro seconded the***
42 ***motion. Vote on motion: James Holtkamp-Aye, Noor Ul-Hasan-Aye, James Adinaro-Aye,***
43 ***Robert Good-Aye. The motion passed unanimously.***

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45 The Board of Adjustment Meeting adjourned at 9:13 a.m.

1 *I hereby certify that the foregoing represents a true, accurate, and complete record of the*
2 *Cottonwood Heights City Board of Adjustment Meeting held Monday, October 22, 2007.*
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9 Teri Forbes
10 T Forbes Group, Inc.
11 Minutes Secretary
12
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14 Minutes approved: 2/1/2008 sm